

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-4013-2017 (O&M)
Date of decision: - 22.05.2019**

Punjab State Cooperative Supply and Marketing Federation Limited

....Petitioner

Versus

Financial Commissioner, Cooperation Punjab Chandigarh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Mehardeep Singh, Advocate and
Mr. Naresh Gopal Sharma, Advocate, for the petitioner.

Mr. Tahaf Bains, Advocate,
for respondents No.5 and 6.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 12.05.2016 (Annexure P-6), passed by the Financial Commissioner, Cooperation, Punjab, passed in Revision Petition No.85 of 2011 filed by respondents No.5 and 6, whereby, the said revision petition has been accepted and order passed by the Additional Registrar (Administration) Cooperative Societies, Punjab, Chandigarh dated 20.05.2011 has been set aside wherein respondents No.5 and 6 were held liable for the damage of the stocks and consequential financial loss suffered by the petitioners.

The factual position as mentioned in the writ petition is that petitioner MarkFed had raised the arbitration proceedings for the loss of ₹41,57,696/- against three personnel, namely, Kulbir Singh, Jagga Mal & Surjit Singh Cheema and, who have been arrayed as respondents No.4 to 6 respectively in the present writ petition. The said arbitration case No.80 of 2008 was decided against the petitioner, vide order dated 29.12.2009 (Annexure P-1). Petitioner filed an appeal No.133 of 2010, wherein, respondents No.4 to 6 were impleaded as respondents. The said appeal filed under Section 68 of the Cooperative Societies Act, 1961 was accepted by the Additional Registrar (Administration) Cooperative Societies, Punjab, Chandigarh, vide order dated 20.05.2011 (Annexure P-3) and respondents No.4 to 6 were held liable for the damage of the stocks and consequential financial loss suffered by the petitioners herein. Against the said order, two revision petitions were filed by respondents No.4 to 6 therein. One by Jagga Mal and Surjit Singh Cheema being Revision Petition No.85 of 2011 and another separate revision petition by respondent No.4 Kulbir Singh. Both the revision petitions were accepted by the Financial Commissioner, Cooperation, Punjab, Chandigarh and order dated 20.05.2011 passed by the Additional Registrar (Administration) Cooperative Societies, Punjab, Chandigarh, which was under challenge in both the petitions, was set aside. This order has been impugned by the petitioner MarkFed in the present writ petition.

Counsel for respondents No.5 and 6 had informed this Court that the order passed in the revision petition preferred by Sh. Kulbir Singh, which was also allowed by the Financial Commissioner,

Cooperation, Punjab and the same order was passed by Additional Registrar (Admn.) Cooperative Societies, Punjab dated 20.05.2011 was set aside, was challenged by the MarkFed by filing CWP No.3873 of 2017. Said writ petition wherein same plea, as raised in this writ petition was raised and after considering all the relevant facts, the said writ petition was dismissed and the identical order passed by the Financial Commissioner on the same allegations and in the same incident has already been upheld by this Court. The said writ petition was dismissed by a Coordinate Bench of this Court, vide order dated 19.04.2017, which is as under:-

“The challenge in the writ petition is to the order dated 29.12.2009 (Annexure P-1) passed by Joint Registrar, Cooperative Societies, Patiala, 12.05.2016 (Annexure P-6) by the Financial Commissioner, Cooperation, Punjab vide which the revision petition filed by respondent Nos.4 to 6 has been accepted.

Mr. Naresh Gopal Sharma, learned counsel appearing on behalf of the petitioner submits that respondent No.4 was appointed as Operator in the year 1972 in Markfed and thereafter, got transferred to Amloh Branch in the year 1993. Wheat stock of the crop year 2000-2001 at Amloh was deteriorated and declared unfit for human consumption by FCI, resulting into loss of ₹41,57,696/-. On 22.08.2007, respondent No.4 was issued charge sheet, as he along with respondent Nos.5 and 6, caused the aforementioned loss and ultimately, the matter was taken up before the Arbitrator for recovery of the amount. The Arbitrator vide order dated 29.12.2009 (Annexure P-1) dismissed the claim of the Markfed.

The petitioner preferred an appeal before the Additional Registrar (Administration), Cooperative Societies, Punjab which was allowed vide order dated 20.05.2011 (Annexure P-3). Resultantly, the Markfed issued recovery notice to respondent Nos.4 to 6 vide letter dated 30.08.2011 (Annexure P-4).

Against the aforementioned order of 20.05.2011, respondent Nos.4 to 6 preferred revision petitions before the Financial Commissioner, Cooperation, Punjab, who, vide order dated 12.05.2016 (Annexures P-5 and P-6) allowed the revision petitions. The orders under challenge are not sustainable in the eyes of law, as it has been, ex facie, proved on record that the aforementioned officers were responsible for not maintaining the stock of the wheat properly and caused the loss. Had they been diligent in performing their duties, the loss could not have been there, as the wheat could have been found to be fit for human consumption, thus, urges this Court for setting aside the orders under challenge.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Naresh Gopal Sharma, for, it is conceded position on record that as per the report of the District Manager, Markfed, Fatehgarh Sahib in the first special 21450 bags of wheat crop 2000-2001 were loaded. Apart from the aforementioned bags, 17930 bags of previous crop of 1999-2000 were also loaded. Thereafter, two more specials were provided on 18.04.2002 and 14.12.2002 in which 32770 and 38208 bags were loaded. All this shows that the movement of the stock was very slow and therefore, the officers cannot be held to be responsible. It is the higher authorities who were responsible for slow movement of stocks and therefore, I am of the view that the finding rendered by the Financial Commissioner in accepting the revision petitions is perfectly legal and justified, much less, based upon preponderance of arguments raised by the parties and cannot be said to be passed without jurisdiction. No ground for interference is made out.

The writ petition is dismissed.”

Counsel for respondents No.4 and 5 prays that as a similar order passed by the Financial Commissioner has already been upheld by this Court in CWP No.3873 of 2017, the present writ petition also deserves to be dismissed as there was a joint proceeding against all the

respondents, which were initiated by petitioner MarkFed by raising the arbitration dispute.

On 13.03.2019, the following order was passed by this Court:-

Learned counsel for respondents No. 5 and 6 states that the present writ petition is squarely covered by the order passed by this Court in CWP No.3873 of 2017, decided on 19.04.2017 by which, the writ petition filed by the petitioner herein, on the similar grounds challenging the order passed by the Financial Commissioner Cooperation dated 12.05.2016 has been upheld, in case of respondent No.4 in the present writ petition.

Learned counsel for the petitioner requests for an adjournment so as to enquire about the factual aspect and submit before this Court as to whether the present writ petition is covered as being claimed by counsel for respondents No. 5 and 6.

An affidavit in this regard be filed by the petitioner before the next date of hearing.

Adjourned to 13.05.2019.”

Today, an affidavit has been filed by Ms. Monika Sharma, District Manager, Punjab State Cooperative Supply & Marketing Federation Limited, Fatehgarh Sahib, District Fatehgarh Sahib, on behalf the petitioner, wherein, it has been admitted that order passed in CWP No.3873 of 2017 covers the case of the petitioner against them as the issue raised in the petition is akin to the issue raised in CWP No.3873 of 2017. Affidavit filed on behalf of the petitioner is as under: -

“1. That the deponent is working as District Manager Punjab State Cooperative Supply & Marketing Federation Limited Fatehgarh Sahib, District Fatehgarh Sahib.

2. That the civil writ petition bearing number 4013 of 2017 is pending in this Hon'ble Court and the same is fixed for today for hearing.

3. That on the last date of hearing the counsel for respondent No.5 and 6 stated before the Hon'ble Court that the matter in issue in the present writ petition is squarely covered by the order passed by this Hon'ble court in CWP No.3873 of 2017 which was decided on 19.04.2017.

4. That the hearing of the present writ petition was adjourned on the last date of hearing on the request of the counsel for the petitioner as the petitioner wants to enquire about the factual aspect as to whether the matter in issue in the present writ petition is actually covered by the order passed by this Hon'ble Court in CWP No.3873 of 2017 which was decided on 19.04.2017 or not.

5. That on the request of the counsel for the petitioner the Hon'ble Court adjourned the hearing of the present writ petition for today. 13.05.2019 and also directed the petitioner to file the affidavit in this regard.

6. That the petitioner have enquired about the factual aspect as to whether the matter in issue in the present writ petition is actually covered by the order passed by this Hon'ble Court in CWP No.3873 of 2017 which was decided on 19.04.2017 or not. And on enquiry it is found that the matter in issue in the present writ petition is akin to the issue which was decided in the CWP No.3873 of 2017.

7. That the present affidavit is being filed by the deponent in compliance to the direction issued by the Hon'ble Court on the last date of hearing this.”

As the petitioner MarkFed have admitted that the present controversy is covered by the order dated 19.04.2017, passed in CWP No.3873 of 2017, the present writ petition is dismissed in view of the said order wherein also similar plea raised by the petitioners has already been rejected in case of a similarly situated employee.

Pending application, if any, will become infructuous.

May 22, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes